

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Adv. No. 19-3091 (KRH)
Case No. 08-35653 (KRH)

Chapter 11

(Jointly Administered)

**NOTICE OF DECISION IN *SIEGEL V. FITZGERALD*
(*IN RE CIRCUIT CITY STORES, INC.*), CASE NO. 19-2240 (4th CIR. APR. 29, 2021)**

The Acting United States Trustee for Region 4 respectfully files this Notice of Decision to alert the Court that the United States Court of Appeals for the Fourth Circuit has rendered a decision in *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, Case No. 19-2240 (4th Cir. Apr. 29, 2021), Slip Op. attached.

1. On July 15, 2019, this Court ruled that the 2017 amendment to 28 U.S.C. § 1930(a)(6), which temporarily increased quarterly fees for large chapter 11 cases, was unconstitutionally non-uniform, although application of the amendment to cases pending on its effective date is not impermissibly retroactive. *See In re Circuit City Stores, Inc.*, 606 B.R. 260 (Bankr. E.D. Va. 2019) (the “Fee Decision”). Both parties appealed to the Fourth Circuit.

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2. On October 9, 2019, Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust, commenced this adversary action based on the Fee Decision, seeking a refund of allegedly overpaid quarterly fees.

3. On December 2, 2019, by stipulation of the parties, this Court stayed this adversary proceeding pending a final decision in the appeal of the Fee Decision. Dkt. 6, 7. A status conference is currently scheduled for May 12, 2021. Dkt. 27, 28.

4. On April 29, 2021, the Fourth Circuit rendered a decision in the appeal of the Fee Decision. *In re Circuit City Stores, Inc.*, Case No. 19-2240 (4th Cir. Apr. 29, 2021). The Fourth Circuit affirmed this Court's holding that the 2017 amendment is not impermissibly retroactive. Slip Op. at 19-23. However, it reversed this Court's decision on uniformity, holding that the 2017 amendment is constitutional. *Id.* at 15-18.

5. The stipulation staying this adversary proceeding defines a "final decision" in the appeal as meaning "that no further request for review (whether via reconsideration, appeal or certiorari) has been sought and the date by which any such request for further review must be sought has passed." Dkt. 6 at 2-3. Because the time to seek review of the Fourth Circuit's April 29, 2021 decision has not yet passed, it is not a "final decision" within the meaning of the stipulation. Accordingly, the stay of this adversary proceeding remains in effect.

Date: April 29, 2021

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Respectfully submitted,

By: /s/ Kathryn R. Montgomery

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